

SVISC Fire Sub-Committee Draft Report

SVISC Fire Sub-Committee Draft Report

Members

Tom Lally	Borough of Sharpsville	
George Gerhart	City of Sharon	
Rudolph Hammond	City of Farrell	
George Kraynak	City of Hermitage	
Patricia Woodings	League of Women Voters	
Tom Lewis	Borough of Wheatland	
Pat White	City of Hermitage	
Joseph Loeding	Borough of Sharpsville	
Tom Tulip	PA Economy League	
Peer Consultant	Dean Fernsler	DCED

Fire Chiefs

Bob Goeltz	City of Hermitage
Andy Totin	Borough of Sharpsville
Joe Santell	City of Farrell
Art Scarmack Jr.	City of Sharon
Andrew E Clarke	Borough of Wheatland

May 7, 2002

SVISC Fire Sub-Committee Draft Report

OBJECTIVE

The objective of this subcommittee is to envision the structure of the fire services under a single municipal government. While maintaining or exceeding the present level of service.

PROCEDURE

This subcommittee is made up of representatives from each municipality with representatives from the economy league and a peer consultant from DCED. The committee also recognizes that the input and total participation of the fire services organizations is critical to the success of this effort. To that end all fire chiefs, union representatives, and volunteer fire departments presidents participated in our discussions.

PRESENT SITUATION

Sharon

The city of Sharon is the only fully paid fire department included in this study. The department consists of 10 firefighters, 4 lieutenants, 4 captains, and 1 fire chief for a total of 19 men. They work out of one central station with an average of four men per shift. The shift pattern is 24 hours on 72 hours off.

Their equipment consists of a 1988 Grumman 1,500 gal. per minute pump, in 1995 K M E. 1,500 gal. Per minute pumper, 1974 Ward LaFrance 1,500 gal. Per minute pumper /100 foot aerial ladder truck and Ford expedition used by Chief officers. The department is also expecting delivery of a new 100-foot aerial truck in the spring of 2002.

The Sharon Fire Departments protects an area of 3.7 square miles with a population of 17,000

In 2001 fire department responded to 483 calls.

The annual cost to operate the fire apartment is \$844,611.

Hermitage

Fire protection for the city of Hermitage is provided by the Hermitage Volunteer Fire Department and The Patagonia Volunteer Fire Department. They form the city of Hermitage Department of Fire/Rescue.

SVISC Fire Sub-Committee Draft Report

The department consists of 1 Fire Marshal 1 Deputy fire marshal, one administrative secretary, one summer intern, and one building & ground maintenance personnel. The above positions are full time paid positions funded by the city of Hermitage.

The remaining fire protection is provided by a 45 active volunteer firemen operating out of 3 Stations. See enclosed equipment listed in attachment A.

. The city of Hermitage fire / rescue protects 32 square-mile with a population of 16,800 residents.

In a 2001 department answered 699 calls.

The annual cost to operate the fire department is \$459,299 of which \$292,299 is provided by the City of Hermitage and \$167,000 is provided by their Hermitage and Patagonia volunteer fire departments.

Farrell

The city of Farrell is a combined paid / volunteer and Full/ Part-time fire department that consists of 1 full-time fire chief 2 full-time firefighters, 13 part-time firefighter and 28 volunteers.

There is one full-time person on duty in the Station 24 hours a day, during daytime hours 2 of the maintenance staff are trained firefighters who also respond to fires.

The department operates from one central stationed. Their equipment consists of a 1991 Pierce pumper, 1981 Grumman pumper, 1996 Pierce Teli-Squirt 65 foot ladder pumper, 1999 Chevy suburban utility vehicle, 2002 Chevy S-10. They also show a 2000 safety & Cascade trailer owned by the volunteers.

Farrell Fire Departments protects an area of 2.18 square-mile with a population of 6240

In 2001 for a fire department responded to 515 calls.

The annual cost to operate the department is \$261,000 with \$233,000 provided by the city of Farrell and additional \$28,000 provided by the Farrell Volunteer Fire Department.

Sharpsville

The Borough of Sharpsville is protected by an all-volunteer force that provides fire protection, rescue, and Emergency Medical Services for residents of the Borough.

The department consists of 53 members, 22 of which are considered active firefighters. They operate out of one central station that is owned by the borough.

SVISC Fire Sub-Committee Draft Report

Their equipment consists of a 1998 E-1 custom pumper, 1971 Haun custom pumper, these vehicles are owned by the borough. A 1978 E-1 mini pumper and a 1998 Chevrolet pickup truck these are owned by the volunteer department. The Borough is expecting the delivery of a 2003 E-1 75 foot aerial ladder/pumper in spring 2003.

The Sharpsville Volunteer Fire Department protects 1.38 square miles and a population of 4540.

In 2001 there responded to 293 calls.

The total operational budget for the department is \$102,104. Of which \$58,723 is provided by the Borough and \$43,381 is provided by the volunteers.

Wheatland .

The Borough of Wheatland fire protection is provided by the Wheatland Volunteer Fire Department which consists of 1-paid personnel and 19 volunteers. They operate out of one central station owned by the Borough.

Their equipment consists of a 1970 Mac pump and 2 1963 Mack pumpers

The department protects an area of 0.83 square-mile with a population of 700.

In 2001 they answered 17 calls.

The annual operating budget of the Wheatland Fire Department is \$23,000 of which \$20,000 being provided by the borough and \$3,000 by volunteer fire department. .

Volunteer Man Hours

In addition to the details mentioned above a critical component of the volunteer fire departments is the amount of time the members spend training in various fire suppression and an emergency rescue procedures.

The following is a breakdown of those hours that volunteers have listed.

Hermitage 12,600 man-hours per year

Farrell 9130 man-hours per year

Sharpsville 3,500 man-hours per year

SVISC Fire Sub-Committee Draft Report

Wheatland 500 man-hours per year

Summary

The combined valley fire departments protect an area, which consists of 40 square miles with a population of 45,320 people.

The total fire force consists of 25 paid firemen 13 part-time and 114 volunteer firemen

The total cost of this fire protection is a \$1,689,980 with \$1,448,600 of this coming from the municipalities and \$241,380 being provided by the volunteer fire departments.

The total responses of the five departments in 2001 were 2017.

See attachment A for breakdown on each fire department.

SUMMARY

While this subcommittee recognizes that the consolidation of the fire services has no easy answers. Our recommendation is that all fire services be maintained at their present status and that under a five community municipal consolidation each department would continue to protect their respective geographical area.

Is further recommended that after consolidation we move toward a consolidated combination Paid/Volunteer service.

It however must be noted at this time that the vast majority of volunteer firemen do not support this concept. Some of the things that volunteer fire departments have to contend with are a decrease in numbers of local volunteers, difficulty with fund raising, and increasing costs to maintain the quality of volunteer services.

Two of the major concerns of the volunteer firefighters are:

1. Everyone would be paying the same taxes for different types of fire protection. (see attachment B for legal opinion on separate taxing districts for fire protection.)
2. The distribution of relief association monies from the state. (see attachment B)

As a result of combining the governments, this trend in the Shenango Valley is likely to accelerate, thereby shifting costs to the new government at a faster rate than would otherwise take place.

SVISC Fire Sub-Committee Draft Report

Therefore the new government will need to anticipate these changes and build in escalating costs, which may approach that of an eventual area wide, full-time department.

A fully paid department would have between 60 and 70 paid firefighters.

COMMENTS

There now exists a mutual aid agreement between all fire apartments in the Shenango Valley for major incidents.

With or without consolidation we feel that if this same cooperation was to exist in all phases of the fire service, for example training, equipment purchases, pre planning, and response to all emergencies. This would result in a more cost-effective delivery of services to all residents of the five municipalities.

SVISC Fire Sub-Committee Draft Report

MEYER & WAGNER

THOMAS C Wagner

LAW OFFICES 115 LAFAYETTE ST. · ST. MARYS, PA 15857 · PH. (814) 781-3445 · FAX (814) 834-9076 ·

E-mail meyerwagner@ncentral.com

December 12, 2001

Shenango Valley Intergovernmental Study Committee
Pennsylvania Economy League Northwest Division

Gentlemen:

You have sought my advice regarding the following questions:

1. **How will the proposed consolidation of the Cities of Sharon, Farrell and Hermitage and the Boroughs of Sharpsville and Wheatland affect the distribution of state funds under the Foreign Fire Insurance Tax Distribution Law to the various fire departments within these existing municipalities?**

This question actually has two parts:

- A. What effect would consolidation have on the total amount of funds distributed by the state to these municipalities; and
- B. What effect would consolidation have on the distributions to the individual fire companies?

SVISC Fire Sub-Committee Draft Report

With respect to the first question, Section 704 of the law contains a distribution formula for each municipality which is based on both population and market value of real estate. Since the population and the market value of real estate for the consolidated municipality will be the same as the aggregated population and market value of real estate for the five municipalities, there should be no effect on the total distribution which will be made under the law to the consolidated municipality. In other words, the total distribution of funds by the state will be the same, whether the municipalities receive the money separately or whether the monies are received by a single, consolidated municipality.

The answer to the second question is more complex. Section 706 of the Distribution Law requires that each municipality certify to the Auditor General whether the municipality is served solely by paid firefighters, solely by volunteer firefighters or by both paid and volunteer firefighters. In a case where a municipality is served by both paid and volunteer firefighters, the municipality must also determine the portion of the “actual fire protection service” which is provided by the paid firefighters and the portion provided by the volunteer firefighters. The Distribution Law does not define what it means by “actual fire protection service”, nor does the law set forth a formula for distinguishing between the service provided by paid firefighters and the service provided by volunteer firefighters. I consulted on this issue with the Auditor General’s office and was advised that the determination of the portions is within the discretion of the municipality.

Section 706(b)(3) of the Distribution Law further provides that, in municipalities having both paid and volunteer firefighters, the foreign fire insurance funds are to be divided between the paid firefighters and the volunteer firefighters in the same proportion as their shares of “actual fire protection service”, as certified by the municipality; provided that the minimum to be distributed to paid firefighters is \$1,100 per paid firefighter.

It is my understanding that in the Shenango Valley area the municipalities are served in the following manner:

1. In the City of Sharon, by a paid fire company;
2. In the City of Farrell, by a combination of paid and volunteer

SVISC Fire Sub-Committee Draft Report

- firefighters;
3. In the City of Hermitage, by two separate volunteer departments, with a paid fire marshal and a paid assistant fire marshal;
 4. In the Borough of Sharpsville, by one volunteer fire department;
 5. In the Borough of Wheatland, by one volunteer fire department.

Assuming that the citizens of Shenango Valley desire to retain their existing fire departments and desire to continue receiving fire protection services in the same manner as before consolidation, then the consolidated municipality will be served by both paid firefighters and volunteer firefighters, so that Section 706(a)(3) and Section 706(b)(3) will apply.

The governing body of the consolidated municipality therefore can apportion its calculation of “actual fire protection service” between the paid firefighters and the volunteer firefighters in such a manner that each of the existing fire companies will continue to receive the same distributions as they had received prior to the consolidation.

Furthermore, the governing bodies of the five current municipalities have the ability to guarantee that the same distributions will continue to the existing fire companies after consolidation. Under Section 733 of the Municipal Consolidation or Merger Act, 53 Pa.C.S.A. Section 733, a consolidation of municipalities may occur either by joint agreement of the governing bodies, approved by ordinance, or by initiative of the electors. If consolidation proceeds on the basis of a joint agreement of the

governing bodies of the five municipalities, then the continued distribution of these foreign fire insurance funds in the same manner as before consolidation is a matter which may be fixed in the joint agreement and therefore binding on the new municipality.

2. **Will the new municipality be required to have a paid fire department to serve the entire municipality or, conversely, will the new municipality be required to eliminate the paid fire company so that all municipalities have the same method of fire protection service?**

It is my understanding that a majority of citizens in each of the current municipalities is satisfied with the manner in which they currently receive fire protection services, so that there is unlikely to be an impetus from the consolidation effort to change the method of service. However, some citizens may argue that the providing of fire protection services in one part of the consolidated municipality by paid firefighters and in other parts by volunteer firefighters constitutes discrimination in violation of the equal protection provisions of the

SVISC Fire Sub-Committee Draft Report

federal and Pennsylvania constitutions.

The decision as to whether any particular situation involves a violation of a constitutional provision is made by the courts of the Commonwealth of Pennsylvania or by the federal courts. My research has failed to disclose any cases in the Pennsylvania appellate courts or in the federal courts having jurisdiction in Pennsylvania that have held that providing different forms of fire protection services to different parts of a municipality constitutes a denial of equal protection or is discriminatory. Anyone familiar with municipal government understands that services are not always uniform throughout a municipality, particularly where the municipality has a mixture of urban and rural areas. In the absence of any clear precedent, the only conclusion which we can reach is that it is highly unlikely that a court will find that a violation of the equal protection provision will occur if the current form of fire protection services continue to be provided in the various parts of the proposed, consolidated municipality. I come to this conclusion for the following reasons:

- A. There is nothing in the Municipal Consolidation or Merger Act which requires that municipal services be provided uniformly throughout the consolidated municipality. A consolidation may be commenced by a joint agreement of the governing bodies of the municipalities. Under Section 734 of the Municipal Consolidation or Merger Act, there are certain provisions which must be covered by a such a joint agreement. In particular, Section 734 requires a uniform tax system and uniform enforcement of ordinances. However, Section 734 says nothing about uniformity of municipal services.
- B. General municipal law of Pennsylvania prohibits a municipality from replacing a volunteer fire company with a paid fire company unless a majority of the voters in the municipality have voted in favor of the change. *531' Section 2832.*
- C. The Pennsylvania Constitution itself says nothing about a requirement of uniformity in providing municipal services. This should be contrasted with Article 8, Section 1, of the Pennsylvania Constitution, which requires that all taxes shall be uniform within the territorial limits of the authority levying the tax. This uniformity provision has been applied in many cases to strike down nonuniform taxes levied by municipalities.

SVISC Fire Sub-Committee Draft Report

- D. The recognized test for determining whether a particular municipal act or system is discriminatory (or a violation of the equal protection provision) is whether the classification possesses some legitimate distinction which provides a reasonable and concrete justification for differential treatment. *Leonard v. memO arc/i* 489 A. 2d 134.9(1985); *Barner v. Juni ta Count'. Tax C/ann Bureau* 522 A. 2d 169(1987). This is commonly referred to as the “rational basis” test. It is first significant to understand that no citizens in the consolidated municipality will be denied fire protection services. The information which has been supplied to me suggests that the quality of fire protection services provided to individual citizens within the Shenango Valley area is not affected by the status of the firefighters as paid or volunteer.
- E. As noted above, the Pennsylvania Constitution requires uniform taxation across the territorial limits of a municipality. In a consolidated municipality where paid firefighters are paid from general taxes, those citizens who receive volunteer fire company services may argue that it is discriminatory that their taxes are being used to support a paid fire company when they do not receive services from that paid fire company. There are a number of logical errors in such a statement. First, it is assumed that all of the fire companies within the consolidated municipality will be participants to a mutual aid pact, under which all of the fire companies are pledged to provide fire protection services as needed throughout the entire municipality. Second, the principal purpose of fire fighting services is the protection of life and property. Particularly with respect to property, to the extent that a fire company in one part of the consolidated municipality saves a property from destruction, all citizens throughout the municipality are benefited equally from that action which saves the building from being removed from the tax rolls.

For the reasons above stated, it is my opinion that the continuation of the existing fire companies, whether paid or volunteer, within the consolidated municipality will be constitutionally valid. However, it is likely that the use of tax money to support the paid and volunteer fire companies will be a sensitive issue at the time of the vote on consolidation. It is recommended that this issue be explored and addressed fully in the joint municipal agreement.

3. **Is it possible to create separate municipal districts for fire protection services and levy differing tax rates in these districts to**

SVISC Fire Sub-Committee Draft Report

accommodate the different kinds of fire protection services provided?

Article 8, Section 1, of the Pennsylvania Constitution states:

“All taxes shall be uniform, upon the same class of subjects, within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws.

This uniformity provision has been applied in many cases to municipal tax systems. It requires that municipalities levy taxes in a uniform manner. There have been a number of court cases in which it has been claimed that a municipal tax was not uniform and therefore unconstitutional. In some of these cases, the courts have pointed out that absolute equality and perfect uniformity in taxation are not required. Rather, the test is whether the classification is based upon some legitimate distinction between the classes that provides a nonarbitrary and “reasonable and just” basis for the difference in treatment. *Leonard v. moral' arch*, 48.9A. 2d 1349(1985). However, all of these cases involved distinctions between types of taxpayers and not between districts within a single municipality. The language in Article 8, Section 1, of the Pennsylvania Constitution which requires uniformity “within the territorial limits of the authority levying the tax” would seem to impose an additional burden on taxing bodies beyond the issue of classifying tax payers.

It may be argued that the cost of providing paid fire protection services in specific districts could be treated as a service fee, rather than a tax. However, at least one Pennsylvania court has already decided that the levy of a service fee for police and fire services is really a tax. *C/v of Washington v. Washington & Jefferson College* 25 D&C 4th 13(1995).

A review of the recently-amended Second Class Township Code is also instructive on this issue. The Second Class Township contains various provisions which allow the township supervisors to create separate districts within the township to provide police protection, refuse collection, sanitary sewer systems, water systems, and street lighting. In each case, the Code permits the township to levy assessments against properties by the foot front or benefit rules for the cost of providing these services. None of these provisions allow for a general tax for such purposes. The Second Class Township Code, like all other municipal codes, permits the levy of

SVISC Fire Sub-Committee Draft Report

general and special taxes. In Section 3207 of the Code, 53 P.S. Section 68207, the Code specifically prohibits “the levy of any taxes upon particular districts or parts of any township for particular purposes.” the Township Code implicitly recognizes the prohibition imposed by the Pennsylvania Constitution against setting up special tax districts.

For all of the above reasons, it is my opinion that it is probably not constitutionally permissible for a Pennsylvania municipality to levy different taxes in different districts within the municipality, even for a particular purpose. In the present case, serious concerns about the legality of creating special districts for tax purposes should make this a method of last resort in addressing issues of inequality in any consolidation.

I hope that the above information is useful in your deliberations. I will be pleased to meet with you to further discuss these issues.